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October 25, 2018

Via ECF

The Honorable Sarah Netburn
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *In Re Terrorist Attacks on September 11, 2001*,
No. 03-md-1570-GBD-SN

Dear Judge Netburn:

We represent the plaintiffs in the action *Anthony Behette, et al. v. Kingdom of Saudi Arabia*, No. 18-cv-00538-GBD-SN, which is part of the above-referenced MDL (the "Behette Plaintiffs"). We write to seek clarification of Your Honor's July 10, 2018 Amended Order Approving Notices to Conform, Short Form Complaints, and Notices of Amendment (ECF No. 4045) (the "July 10 Order") as it relates to asserting claims against the Islamic Republic of Iran ("Iran") on behalf of the Behette Plaintiffs.

The *Behette* action was commenced by Short Form Complaint and made part of the MDL pursuant to the Court's Order of May 3, 2017 (ECF No. 3543), which has now been superseded by the July 10 Order. The prior Order did not include a procedure for filing short form complaints against Iran. The July 10 Order established such a procedure, but it appears that the Behette Plaintiffs may not be able to use it.

The July 10 Order provides that "[a]ny plaintiff who has not yet filed a claim against Iran, but intends to do so, may initiate an action against Iran through the filing of an Iran Short Form Complaint." July 10 Order at 4. However, the July 10 Order also provides that "[a]ll solatium claims must be filed on the same Iran Short Form Complaint as the claims brought by the decedent family member's estate." *Id.* at 5 (emphasis in original).¹ The Behette Plaintiffs are all solatium plaintiffs who have decided to assert their claims separately from the claims asserted by the estates of their decedent family members, and are not represented by the same law firms that represent the estates of their decedent family members. As a result, under a

¹ There was no such stricture in the Court's May 3, 2017 Order under which the *Behette* action was commenced.

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strict reading of the July 10 Order, the Behette Plaintiffs may be unable to use the Iran Short Form Complaint to assert their solatium claims, since those claims will not be filed in the same Iran Short Form Complaint as the claims brought by their decedent family members' estates.²

It appears that the provision of the July 10 Order at issue was intended to avoid unnecessary fragmentation of claims brought by members of the same family, but did not contemplate the apparently rare circumstance presented by the Behette Plaintiffs. We respectfully submit that allowing the Behette Plaintiffs to use the Iran Short Form Complaint in the same manner in which they have already asserted claims against Saudi Arabia is consistent with the Court's stated desire to "manage the influx of new cases and claims in the most efficient and organized manner possible." July 10 Order at 1.

Accordingly, we respectfully request that the Court grant the Behette Plaintiffs permission to use the Iran Short Form Complaint procedure to assert solatium claims against Iran.

In addition, we respectfully ask the Court to permit the assertion in the Iran Short Form Complaint of claims of an additional plaintiff who is the estate representative of a deceased solatium claimant related to certain of the Behette Plaintiffs (i.e., the estate representative of an immediate family member who survived one of the September 11 victims but subsequently died). The July 10 Order appears to envision such claims, as it notes that "[f]or deceased solatium claimants, a death certificate or sworn affidavit shall be requested to ensure that the claimant did not predecease the 9/11 victim." *Id.* at 2. However, the form of Iran Short Form Complaint appears to apply only to "the estate representative of someone who was killed as a result of the September 11, 2001 Terrorist Attacks" or to "the surviving immediate family member of someone who was killed as a result of the September 11, 2001 Terrorist Attacks" (and to personal injury plaintiffs), but not to plaintiffs who are the estate representatives of surviving immediate family members. *See* Iran Short Form Complaint (ECF No. 4045-3) ¶ 5.c.

Accordingly, we respectfully request permission to include the claims of the estate representative of an immediate family member who survived the September 11 victim in the Behette Plaintiffs' Iran Short Form Complaint, either at the time the Iran Short Form Complaint is filed or via a subsequent amendment.

We thank the Court for its consideration of these requests.

Respectfully,

s/Robert A. O'Hare Jr.

Robert A. O'Hare Jr.

cc: All Counsel (via ECF)

² The July 10 Order directs the parties to "adhere to both the letter and spirit of these procedures." *Id.* at 1.